IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/07/2003

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.PD.No.1481 of 2003
and
CMP No.10528 of 2003

V.Chinniah .. Petitioner

-Vs-

Pitchaimuthu .. Respondent

This civil revision petition is preferred under Sec.115 of The Code of Civil Procedure against the order dated 31.3.2003 in I.A.No.411/20 03 in O.S.No.153/2002 on the file of the Subordinate Judge, Karur.

!For Petitioner : Mr.N.Ananthapadmanabhan

^For Respondent : ---

:ORDER
Heard the learned Counsel for the revision petitioner. The Court is of the view that in order to avoid the avoidable delay, notice to the opposite party is not necessary, and the available materials would be suffice to give disposal to the revision.
2. What is challenged herein is an order of the learned Subordinate Judge, Karur dismissing an application to send Ex.A-1 promissory note for comparison of the signatures found therein with the admitted signatures by an expert in the field of handwriting.

3. It was a suit filed by the respondent for a money decree based on a promissory note marked as Ex.A1. Following the written statement filed by the defendant, the revision petitioner herein, issues were framed. The trial has actually started. It is pertinent to point out that the plaintiff's evidence was over. When the defendant was about to march his witness in order to prosecute his defence, the instant application was filed by the defendant seeking for sending Ex.A1 promissory note to the handwriting expert for comparison on the ground that the signature found in the document was not that of the defendant. It is brought to the notice of the Court by the learned Counsel for the petitioner that without the comparison of the signature, his defence cannot be brought home, and hence, it would be very necessary to send the document for comparison to the handwriting expert. The lower Court has dismissed the application pointing out that the application was filed pending defendant's evidence. The Court is of the considered view that the lower

Court was perfectly correct in holding so. It has to be noted that sufficient opportunity was available for the party all along. But, the instant application has been filed at the time when the plaintiff's evidence was over and the defendant was called upon to march his evidence. The petitioner has sought for such a relief before the lower Court only with a view to protract the trial proceedings, and thus, such a course cannot be allowed. The Court does not find reason to interfere in the order of the lower Court. At the same time, the Court is of the view that a direction has got to be given to the lower Court to compare the signature found in Ex. A1 promissory note in question along with the admitted signatures available and to take a decision in the case.

4. Therefore, the lower Court is directed to exercise powers under Sec.73 of the Evidence Act before arriving at a correct conclusion. It is brought to the notice of the Court by the learned Counsel for the petitioner that the matter has been posted for arguments, and opportunity has not been given to the defendant to project his evidence. Hence, the lower Court is also directed to give an opportunity to the revision petitioner/defendant, if not given already, to adduce his evidence both oral and documentary. With these directions, this civil revision petition is dismissed. No costs. Consequently, connected C.M.P. is also dismissed.

Index: Yes
Internet: Yes

To:

The Subordinate Judge, Karur.

nsv/